

A bill for an act

relating to children; modifying provisions relating to children in need of protection or services; amending Minnesota Statutes 2008, sections 260C.007, subdivisions 6, 14; 260C.163, subdivision 2; 260C.201, by adding a subdivision; 260C.301, subdivision 1; Minnesota Statutes 2009 Supplement, sections 260.012; 260C.175, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 260.012, is amended to read:

260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; REASONABLE EFFORTS.

(a) Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time, and the court must ensure that the responsible social services agency makes reasonable efforts to finalize an alternative permanent plan for the child as provided in paragraph (e). In determining reasonable efforts to be made with respect to a child and in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern. Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that:

(1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;

(2) the parental rights of the parent to another child have been terminated involuntarily;

(3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);

(4) the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction; ~~or~~

(5) the conditions of section 260C.301, subdivision 1, paragraph (b), clause (11), are met; or

(6) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.

(b) When the court makes one of the prima facie determinations under paragraph (a), either permanency pleadings under section 260C.201, subdivision 11, or a termination of parental rights petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under section 260C.201, subdivision 11, must be held within 30 days of this determination.

(c) In the case of an Indian child, in proceedings under sections 260B.178 or 260C.178, 260C.201, and 260C.301 the juvenile court must make findings and conclusions consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901 et seq., as to the provision of active efforts. In cases governed by the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, the responsible social services agency must provide active efforts as required under United States Code, title 25, section 1911(d).

(d) "Reasonable efforts to prevent placement" means:

(1) the agency has made reasonable efforts to prevent the placement of the child in foster care by working with the family to develop and implement a safety plan; or

(2) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home.

(e) "Reasonable efforts to finalize a permanent plan for the child" means due diligence by the responsible social services agency to:

(1) reunify the child with the parent or guardian from whom the child was removed;

(2) assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by section 260C.212, subdivision 4;

(3) conduct a relative search to identify and provide notice to adult relatives as required under section 260C.212, subdivision 5;

(4) place siblings removed from their home in the same home for foster care or adoption, or transfer permanent legal and physical custody to a relative. Visitation between siblings who are not in the same foster care, adoption, or custodial placement or facility shall be consistent with section 260C.212, subdivision 2; and

(5) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and considers permanent alternative homes for the child inside or outside of the state, preferably through adoption or transfer of permanent legal and physical custody of the child.

(f) Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family. Services may include those provided by the responsible social services agency and other culturally appropriate services available in the community. At each stage of the proceedings where the court is required to review the appropriateness of the responsible social services agency's reasonable efforts as described in paragraphs (a), (d), and (e), the social services agency has the burden of demonstrating that:

(1) it has made reasonable efforts to prevent placement of the child in foster care;

(2) it has made reasonable efforts to eliminate the need for removal of the child from the child's home and to reunify the child with the child's family at the earliest possible time;

(3) it has made reasonable efforts to finalize an alternative permanent home for the child, and considers permanent alternative homes for the child inside or outside of the state; or

(4) reasonable efforts to prevent placement and to reunify the child with the parent or guardian are not required. The agency may meet this burden by stating facts in a sworn petition filed under section 260C.141, by filing an affidavit summarizing the agency's reasonable efforts or facts the agency believes demonstrate there is no need for reasonable efforts to reunify the parent and child, or through testimony or a certified report required under juvenile court rules.

(g) Once the court determines that reasonable efforts for reunification are not required because the court has made one of the prima facie determinations under paragraph (a), the court may only require reasonable efforts for reunification after a hearing according to section 260C.163, where the court finds there is not clear and convincing evidence of the facts upon which the court based its prima facie determination. In this case when there is clear and convincing evidence that the child is in need of protection or services, the court may find the child in need of protection or services and order any of the dispositions

available under section 260C.201, subdivision 1. Reunification of a surviving child with a parent is not required if the parent has been convicted of:

(1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;

(2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the surviving child; or

(3) a violation of, or an attempt or conspiracy to commit a violation of, United States Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent.

(h) The juvenile court, in proceedings under sections 260B.178 or 260C.178, 260C.201, and 260C.301 shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:

(1) relevant to the safety and protection of the child;

(2) adequate to meet the needs of the child and family;

(3) culturally appropriate;

(4) available and accessible;

(5) consistent and timely; and

(6) realistic under the circumstances.

In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances or that reasonable efforts are not required as provided in paragraph (a).

(i) This section does not prevent out-of-home placement for treatment of a child with a mental disability when it is determined to be medically necessary as a result of the child's diagnostic assessment or individual treatment plan indicates that appropriate and necessary treatment cannot be effectively provided outside of a residential or inpatient treatment program and the level or intensity of supervision and treatment cannot be effectively and safely provided in the child's home or community and it is determined that a residential treatment setting is the least restrictive setting that is appropriate to the needs of the child.

(j) If continuation of reasonable efforts to prevent placement or reunify the child with the parent or guardian from whom the child was removed is determined by the court to be inconsistent with the permanent plan for the child or upon the court making one of the prima facie determinations under paragraph (a), reasonable efforts must be made to place the child in a timely manner in a safe and permanent home and to complete whatever steps are necessary to legally finalize the permanent placement of the child.

(k) Reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts to prevent placement or to reunify the child with the parent or guardian from whom the child was removed. When the responsible social services agency decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent under paragraph (a), the agency shall disclose its decision and both plans for concurrent reasonable efforts to all parties and the court. When the agency discloses its decision to proceed on both plans for reunification and permanent placement away from the parent, the court's review of the agency's reasonable efforts shall include the agency's efforts under both plans.

Sec. 2. Minnesota Statutes 2008, section 260C.007, subdivision 6, is amended to read:

Subd. 6. **Child in need of protection or services.** "Child in need of protection or services" means a child who ~~is in need of protection or services because the child:~~

(1) is abandoned or without parent, guardian, or custodian;

(2)(i) has been a victim of physical or sexual abuse as defined in section 626.556, subdivision 2, (ii) resides with or has resided with a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13, (iii) resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13, or (iv) is a victim of emotional maltreatment as defined in subdivision 15;

(3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

(4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;

(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child who entered foster care under a voluntary placement agreement between the parent and the responsible social services agency under section 260C.212, subdivision 8;

(7) has been placed for adoption or care in violation of law;

(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;

(9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;

(10) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;

(11) has engaged in prostitution as defined in section 609.321, subdivision 9;

(12) has committed a delinquent act or a juvenile petty offense before becoming ten years old;

(13) is a runaway;

(14) is a habitual truant; ~~or~~

(15) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification under section 260B.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense; or

(16) has a parent whose parental rights to one or more other children were involuntarily terminated or whose custodial rights to another child have been involuntarily transferred to a relative and there is a case plan prepared by the responsible social services agency documenting a compelling reason why filing the termination of parental rights petition under section 260C.301, subdivision 3, is not in the best interests of the child.

Sec. 3. Minnesota Statutes 2008, section 260C.007, subdivision 14, is amended to read:

Subd. 14. **Egregious harm.** "Egregious harm" means the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. The egregious harm need not have occurred in the

state or in the county where a termination of parental rights action is otherwise properly
venued. Egregious harm includes, but is not limited to:

(1) conduct towards a child that constitutes a violation of sections 609.185 to 609.21,
609.222, subdivision 2, 609.223, or any other similar law of any other state;

(2) the infliction of "substantial bodily harm" to a child, as defined in section 609.02,
subdivision 7a;

(3) conduct towards a child that constitutes felony malicious punishment of a child
under section 609.377;

(4) conduct towards a child that constitutes felony unreasonable restraint of a child
under section 609.255, subdivision 3;

(5) conduct towards a child that constitutes felony neglect or endangerment of a
child under section 609.378;

(6) conduct towards a child that constitutes assault under section 609.221, 609.222,
or 609.223;

(7) conduct towards a child that constitutes solicitation, inducement, or promotion
of, or receiving profit derived from prostitution under section 609.322;

(8) conduct towards a child that constitutes murder or voluntary manslaughter as
defined by United States Code, title 18, section 1111(a) or 1112(a);

(9) conduct towards a child that constitutes aiding or abetting, attempting,
conspiring, or soliciting to commit a murder or voluntary manslaughter that constitutes a
violation of United States Code, title 18, section 1111(a) or 1112(a); ~~or~~

(10) conduct toward a child that constitutes criminal sexual conduct under sections
609.342 to 609.345; or

(11) the unexplained serious physical injury of a child that resulted from the
intentional conduct or willful neglect of the child's parent.

Sec. 4. Minnesota Statutes 2008, section 260C.163, subdivision 2, is amended to read:

Subd. 2. **Right to participate in proceedings.** A child who is the subject of
a petition, and the parents, guardian, or legal custodian of the child have the right to
participate in all proceedings on a petition. Official tribal representatives have the right
to participate in any proceeding that is subject to the Indian Child Welfare Act of 1978,
United States Code, title 25, sections 1901 to 1963.

Any grandparent of the child has a right to participate in the proceedings to the
same extent as a parent, if the child has lived with the grandparent within the two years
preceding the filing of the petition. At the first hearing following the filing of a petition,
the court shall ask whether the child has lived with a grandparent within the last two years,

except that the court need not make this inquiry if the petition states that the child did not live with a grandparent during this time period. Failure to notify a grandparent of the proceedings is not a jurisdictional defect.

If, in a permanency proceeding involving a child in need of protection or services, ~~the responsible social services agency recommends~~ any party files a petition for transfer of permanent legal and physical custody to a named relative, the relative has a right to participate in the permanency proceeding as a party solely on the issue of the relative's suitability to be a legal and physical custodian for the child and whether the transfer is in the child's best interests, and thereafter shall receive notice of any hearing in the proceedings.

Sec. 5. Minnesota Statutes 2009 Supplement, section 260C.175, subdivision 1, is amended to read:

Subdivision 1. **Immediate custody.** No child may be taken into immediate custody except:

(1) with an order issued by the court in accordance with the provisions of section 260C.151, subdivision 6, or Laws 1997, chapter 239, article 10, section 10, paragraph (a), clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the provisions of section 260C.154;

(2) by a peace officer:

(i) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian, but only for the purpose of transporting the child home, to the home of a relative, or to another safe place which may include a shelter care facility; or

(ii) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare. If an Indian child is a resident of a reservation or is domiciled on a reservation but temporarily located off the reservation, the taking of the child into custody under this clause shall be consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1922;

(3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; or

(4) by a peace officer or probation officer under section 260C.143, subdivision 1 or 4.

Sec. 6. Minnesota Statutes 2008, section 260C.201, is amended by adding a subdivision to read:

Subd. 13. **Stay of adjudication.** (a) The court may stay an adjudication that the child is in need of protection or services under the following circumstances:

(1) the court has not made a prima facie finding in a hearing under section 260C.178 or a subsequent hearing that the child's health or welfare would be immediately endangered if the child remained in or was returned to the care of the parent, guardian, or legal custodian from whom the child was removed;

(2) the allegations in the petition have been admitted, or when a hearing has been held as provided in section 260C.163 and the allegations contained in the petition have been duly proven;

(3) the parent is engaging in a case plan, approved by the local social services agency and the court, which is anticipated to correct the conditions that led to the child in need of protection petition and can be completed within 90 days; and

(4) the court makes a specific finding as to how it is in the best interests of the child that adjudication is stayed.

(b) The court may stay an adjudication for a period not to exceed 90 days from the date on which the findings in paragraph (a) were made, unless the court finds that it is in the child's best interests to extend the period no more than one additional 90-day period.

(c) If the parent and child have complied with the terms of the stay, the case must be dismissed without an adjudication that the child is in need of protection or services within the time periods set in paragraph (b).

(d) If the parent or child has not complied with the terms of the stay within the time periods set in paragraph (b), the court shall adjudicate the child in need of protection or services.

Sec. 7. Minnesota Statutes 2008, section 260C.301, subdivision 1, is amended to read:

Subdivision 1. **Voluntary and involuntary.** The juvenile court may upon petition, terminate all rights of a parent to a child:

(a) with the written consent of a parent who for good cause desires to terminate parental rights; or

(b) if it finds that one or more of the following conditions exist:

(1) that the parent has abandoned the child;

(2) that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and

either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable;

(3) that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth;

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that:

(i) the parent's parental rights to one or more other children were involuntarily terminated or;

~~that~~ (ii) the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction; or

(iii) the parent has subjected any child to egregious harm as defined in section 260C.007, subdivision 14;

(5) that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been

11.1 corrected upon a showing that the parent or parents have not substantially complied with
11.2 the court's orders and a reasonable case plan; and

11.3 (iv) reasonable efforts have been made by the social services agency to rehabilitate
11.4 the parent and reunite the family.

11.5 This clause does not prohibit the termination of parental rights prior to one year, or
11.6 in the case of a child under age eight, prior to six months after a child has been placed
11.7 out of the home.

11.8 It is also presumed that reasonable efforts have failed under this clause upon a
11.9 showing that:

11.10 (A) the parent has been diagnosed as chemically dependent by a professional
11.11 certified to make the diagnosis;

11.12 (B) the parent has been required by a case plan to participate in a chemical
11.13 dependency treatment program;

11.14 (C) the treatment programs offered to the parent were culturally, linguistically,
11.15 and clinically appropriate;

11.16 (D) the parent has either failed two or more times to successfully complete a
11.17 treatment program or has refused at two or more separate meetings with a caseworker
11.18 to participate in a treatment program; and

11.19 (E) the parent continues to abuse chemicals.

11.20 (6) that a child has experienced egregious harm in the parent's care which is of a
11.21 nature, duration, or chronicity that indicates a lack of regard for the child's well-being,
11.22 such that a reasonable person would believe it contrary to the best interest of the child
11.23 or of any child to be in the parent's care;

11.24 Lack of regard for the child's well-being may be established by a statement, behavior,
11.25 action, or failure to act before, during, or after a child experiences egregious harm that
11.26 indicates the parent either inflicted the egregious harm, knew or should have known of the
11.27 egregious harm, or is unable or unwilling to protect a child from the same or similar harm
11.28 in the future. A statement, behavior, action, or failure to act includes, but is not limited to:

11.29 (i) inflicting the egregious harm;

11.30 (ii) permitting another to inflict egregious harm;

11.31 (iii) failing to protect the child from egregious harm;

11.32 (iv) unreasonable delay in obtaining medical evaluation or treatment for a child
11.33 who experiences egregious harm;

11.34 (v) giving a history of the circumstances of the child's injury or harm that is
11.35 inconsistent with the egregious harm and which does not reasonably explain the injury
11.36 or harm;

(vi) failure to protect the child from a caretaker whose past history includes infliction of substantial bodily harm as defined in section 609.02, subdivision 7a, on a child, great bodily harm as defined in section 609.02, subdivision 8, on a child, or egregious harm under section 260C.007, subdivision 14, when the parent knew or should have known of the caretaker's past history; or

(vii) aiding, abetting, or conspiring to conceal actions that constitute egregious harm of a child;

(7) that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52;

(8) that the child is neglected and in foster care; ~~or~~

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (b), clauses (1) to (3);₂

(10) that the parent has engaged in conduct toward the child's other parent that constitutes a violation of sections 609.185 to 609.20; or

(11) that the parent is incarcerated or incarcerated and unavailable to provide parent care to a child because of postincarceration parole restrictions for more than 24 months following the placement of the child into foster care and:

(i) the parental rights of the child's other parent are terminated or the other parent is deceased;

(ii) following the reasonable and comprehensive search for relatives required under section 260C.212, subdivision 5, an award of legal and physical custody to a suitable relative, as defined in section 260C.007, subdivision 27, cannot be made or is not in the child's best interests; and

(iii) the court approves the social services agency's determination that there are no compelling reasons for the child to continue in long-term foster care or the child does not qualify for an order for long-term foster care under section 260C.201, subdivision 11.

In an action involving an American Indian child, sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.